

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

G. DANIEL WALKER,
Plaintiff,

No. C 09-05055 SBA (PR)

ORDER OF DISMISSAL

v.

A. HEDGPETH, et al.,
Defendants.

Plaintiff G. Daniel Walker, currently incarcerated at Salinas Valley State Prison, filed a document entitled, "Corruption, Crimes, Conspiracy and Racketeering by State Prison Staff to Compensate for Lost Wages Due to Furlough Days," addressed to the "United States Grand Jury for Northern California." Because the Grand Jury is not a body that can receive mail, this document was apparently sent to this Court and the Clerk of the Court has construed it as a civil rights complaint under 42 U.S.C. § 1983. After being sent paperwork and a direction to do so, Plaintiff has also filed an application to proceed in forma pauperis.

In its Order to Show Cause pursuant to 28 U.S.C. § 1915(g) dated November 4, 2009, the Court found Plaintiff had "on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted," and further found Plaintiff was not "under imminent danger of serious physical injury." See 28 U.S.C. § 1915(g). Consequently, the Court ordered Plaintiff to show cause why the action should not be dismissed pursuant to 28 U.S.C. § 1915(g). See Andrews v. King, 398 F.3d 1113, 1121 (9th Cir. 2005) ("Andrews I").

On November 20, 2009, Plaintiff filed a document entitled, "Response to Meaningless & Pecksniffian OSC," in which he claims he was seeking a Grand Jury investigation by filing a "criminal complaint," and he was not intending to file a civil rights complaint.

The Court now reviews this action and DISMISSES it for the reasons set forth below.

DISCUSSION

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. See id. at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a violation of a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

Here, Plaintiff may not institute a private criminal proceeding subjecting Defendants to arrest and indictment. The Fifth Amendment to the Constitution provides that, except for certain military cases, "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury." Accordingly, the "criminal complaint" is DISMISSED as frivolous.

CONCLUSION

For the forgoing reasons, this action is hereby DISMISSED. Plaintiff's application for in forma pauperis status is DENIED.

The Court has rendered its final decision on this matter; therefore, this Order TERMINATES Plaintiff's case. The Clerk of the Court shall terminate all pending motions and close the file.

IT IS SO ORDERED.

DATED: 12/3/09


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
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5

6 G.DANIEL WALKER,
7 Plaintiff,

Case Number: CV09-05055 SBA

CERTIFICATE OF SERVICE

8 v.

9 A. HEDGPETH et al,

10 Defendant.
11 _____/

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on December 4, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
16 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 G. Daniel Walker B-54570
19 Salinas Valley State Prison
31625 Highway 101
Soledad, CA 93960

20 Dated: December 4, 2009

21 Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk
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